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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------------------|------------------|
| 10/809,336   | 03/26/2004  | Cecilia DeVenezia    | DV-04                           | 9525             |
| 47728  | 7590        | 10/17/2005           |                                 |                  |
| THOMAS J. GERMINARIO, ESQ.<br>154 ROUTE 206<br>CHESTER, NJ 07930 |             |                      | EXAMINER<br>HAWK, NOAH CHANDLER |                  |
|  |             |                      | ART UNIT                        | PAPER NUMBER     |
|  |             |                      | 3637                            |                  |
| DATE MAILED: 10/17/2005  |             |                      |                                 |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/809,336 | <b>Applicant(s)</b><br>DEVENEZIA ET AL. |  |
|                              | <b>Examiner</b><br>Noah C. Hawk      | <b>Art Unit</b><br>3637                 |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the reversible electric motor of Claim 1 and batteries of Claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The disclosure is objected to because of the following informalities: the specification and claims must have line numbers.

Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 3-8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The limitation of "the operator" in Claim 3, line 6 and Claim 4, line 10 specifically limits the claims to particular part of the human body. A claim directed to or including within its scope a human being or attributes of a human being is not patentable subject matter. See MPEP §2105 and 1077 OG 24 (April 21, 1987).

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 3 and 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. Claim 3 recites the limitation "the handle" in line 6.

There is insufficient antecedent basis for this limitation in the claim.

7. Claims 3-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In claims 3 and 4, the limitation of "the operator" specifically limits the claims to a particular part of the human body. Since people come in all different shapes, sizes, abilities, and characteristics, the scope of the claim is unclear. See §101 rejections above.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

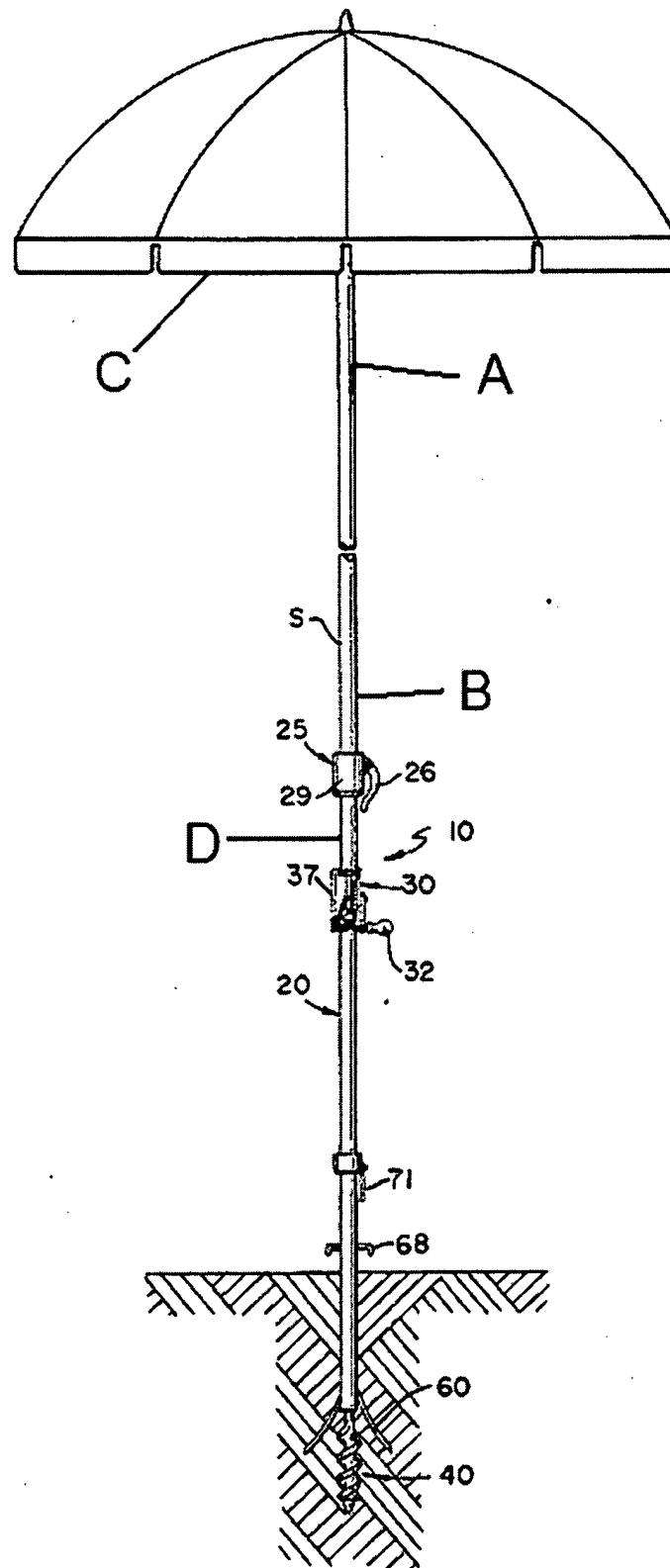
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in US Patent 5152495 in view of Doreste in US Patent 6267127. Jacinto et al. disclose a self-anchoring beach umbrella comprising a canopy member having an upper tubular element (A), to which a spreadable canopy (C) is attached, and a lower tubular element (B); a pole member (20) having an upper element (D), a motor element (137), comprising a reversible electric motor (80), having on its lower end an axially-disposed shaft (35) through which a rotary torque is generated when the motor is activated and an auger (40) coupled to the shaft of the reversible electric motor such that the auger

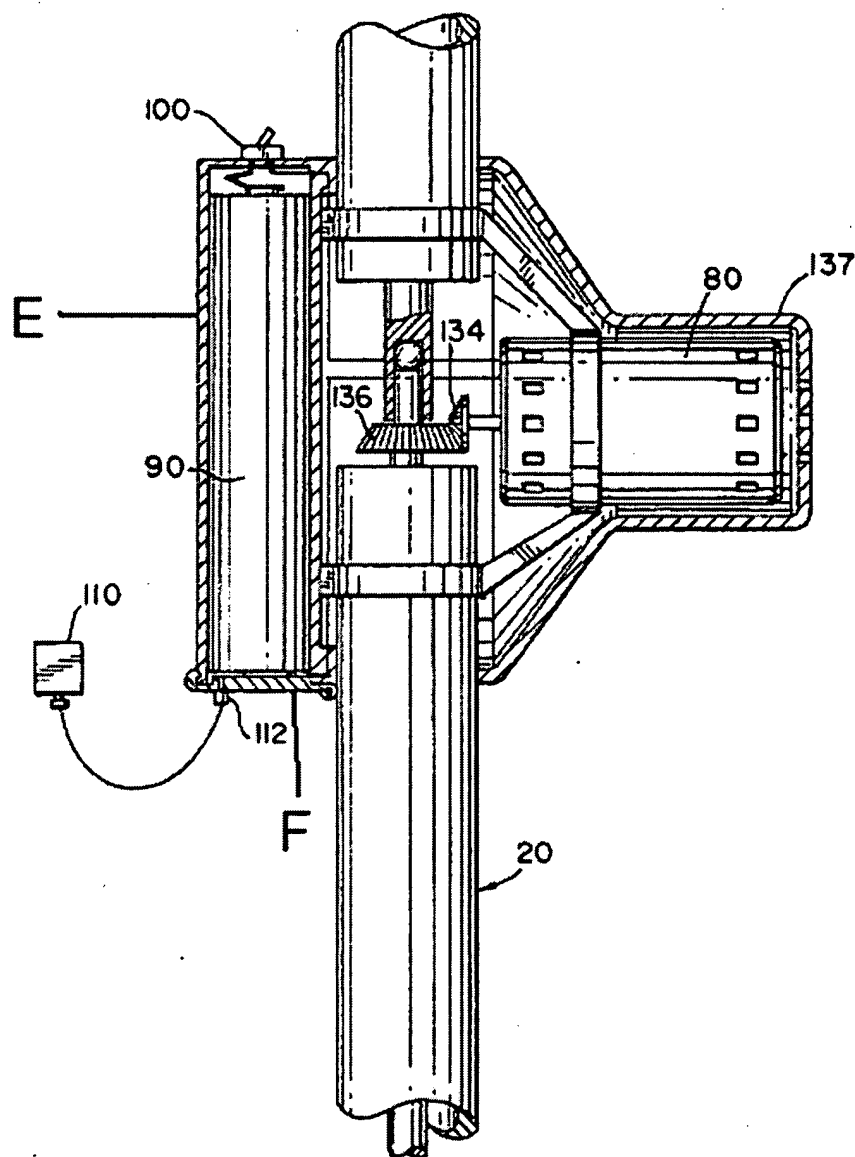
Art Unit: 3637

rotates in a forward or reverse direction when the motor is activated; a battery chamber (E) located in or mounted upon the pole member, said battery chamber having within it one or more batteries (90) and having a means (F) for accessing said batteries so that they may be removed and replaced or recharged; a switch (100) mounted on the motor element of the pole member and electrically connected to the batteries, whereby the motor may be activated and the direction and speed of the motor may be controlled.

Jacinto et al. do not teach an axial lumen in the lower tubular element or an upper element for insertion therein. Doreste teaches a beach umbrella device with a canopy member (12) having a lower tubular element (20) within which is formed an axial lumen (26) as well as a pole member (50) having an upper element (52) formed for insertion into the axial lumen of the canopy member. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. by using an axial lumen in the lower tubular element to receive an upper element formed for insertion therein as taught by Doreste in order to allow the canopy member to be more easily separated from the pole member.



Jacinto et al. Figure 1



Jacinto et al. Figure 3

10. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste as applied to claim 1 above, and further in view of



Adams et al. As stated above, Jacinto et al. in view of Doreste teaches all of the limitations of Claim 1 including an augur-anchored beach umbrella, but does not teach a handle on the motor with a pressure sensitive switch. Adams et al. teach an auger device (1) with a handle (comprising 47, 49 and 51) attached to the motor element (5) of the pole member (35), wherein the switch (57) is positioned on the handle and the switch is a positive action switch (see Adams et al., Column 3, lines 53-54 – “spring-loaded” is taken in this case to mean that it springs back to the “off” position when pressure is not constantly applied). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste by adding a handle and placing a positive action switch on it as taught by Adams et al. in order to make the machine easier to control.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste and Adams et al. as applied to claim 3 above, and further in view of Mattson in US Patent 4528544. As stated above, Jacinto et al. in view of Doreste and Adams et al. teaches the limitations of claim three including an augur-anchored beach umbrella, but does not teach the specific switch. Mattson discloses a switch that regulates the direction of a motor by the direction of the pressure applied to the switch (see Mattson, Column 1, lines 51-55) and regulates the speed of the motor by the amount of pressure applied to the switch (see Mattson, Column 1, lines 48-51). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste and Adams et al. by using a switch which

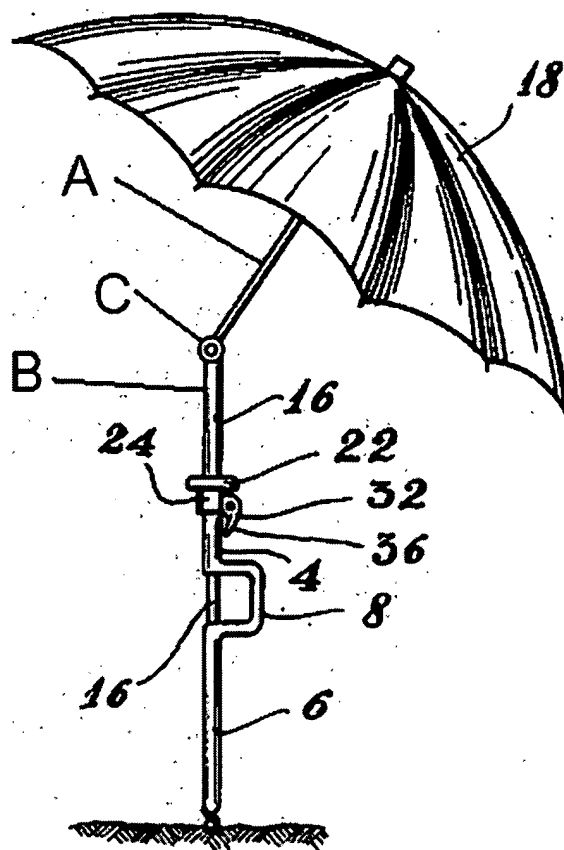
regulates the direction and speed of the motor as taught by Mattson in order to allow the user to select the correct drilling direction and speed.

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste as applied to claim 1 above, and further in view of Adams et al. As stated above, Jacinto et al. in view of Doreste teaches all of the limitations of Claim 1 including an augur-anchored beach umbrella, but does not teach a detachably coupled augur. Adams et al. teach an auger (3) which is detachably coupled (see Adams et al., Column 3, lines 57-63) to the shaft (61) of the motor. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al in view of Doreste by using a detachably coupled auger as taught by Adams et al. in order to allow the user to attach different size and shape augers to the device.

13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste and Adams et al. as applied to claims 2-4 above. As stated above, Jacinto et al. in view of Doreste and Adams et al. teaches all of the limitations of Claim 2-4 including an augur-anchored beach umbrella with a handle and a switch on the handle. Adams et al. further teach an auger (3) which is detachably coupled (see Adams et al., Column 3, lines 57-63) to the shaft (61) of the motor. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al in view of Doreste and Adams et al. by using a detachably coupled auger as taught by Adams et al. in order to allow the user to attach different size and shape augers to the device.

14. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste, Adams et al. and Mattson as applied to claim 5 above. As stated above, Jacinto et al. in view of Doreste teaches all of the limitations of Claim 1 including an augur-anchored beach umbrella. Adams et al. further teach an auger (3) which is detachably coupled (see Adams et al., Column 3, lines 57-63) to the shaft (61) of the motor. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al in view of Doreste, Adams et al. and Mattson by using a detachably coupled auger as taught by Adams et al. in order to allow the user to attach different size and shape augers to the device.

15. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste as applied to claim 1 above, and further in view of Campomar in US Patent 2628797. As stated above, Jacinto et al. in view of Doreste teaches all of the limitations of Claim 1 including an augur-anchored beach umbrella, but does not teach a tilting umbrella. Campomar teaches an auger-anchored umbrella with a joint means (C) disposed between the upper (A) and lower (B) tubular elements for tilting the upper tubular element of the canopy about an axis with respect to the lower tubular element. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste by using a tilting umbrella as taught by Campomar in order to change the position of the umbrella without changing the anchor position.



Campomar, Figure 3

16. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste and Adams et al. as applied to claims 2-4 above, and further in view of Campomar in US Patent 2628797. As stated above, Jacinto et al. in view of Doreste and Adams et al. teaches all of the limitations of Claims 2-4 including an auger-anchored beach umbrella, but does not teach a tilting umbrella. Campomar teaches an auger-anchored umbrella with a joint means (C) disposed between the upper (A) and lower (B) tubular elements for tilting the upper tubular element of the canopy about an axis with respect to the lower tubular element. It would have been obvious to one of

Art Unit: 3637

ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste and Adams et al. by using a tilting umbrella as taught by Campomar in order to change the position of the umbrella without changing the anchor position.

17. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste, Adams et al. and Mattson as applied to claim 5 above, and further in view of Campomar in US Patent 2628797. As stated above, Jacinto et al. in view of Doreste, Adams et al. and Mattson teaches all of the limitations of Claim 1 including an augur-anchored beach umbrella, but does not teach a tilting umbrella. Campomar teaches an auger-anchored umbrella with a joint means (C) disposed between the upper (A) and lower (B) tubular elements for tilting the upper tubular element of the canopy about an axis with respect to the lower tubular element. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste, Adams et al. and Mattson by using a tilting umbrella as taught by Campomar in order to change the position of the umbrella without changing the anchor position.

18. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over:

- a. Jacinto et al. in view of Doreste and Adams et al. as applied to claim 6 as dependent on claims 1-4 above, and further in view of Campomar. As stated above, Jacinto et al. in view of Doreste and Adams et al. teaches all of the limitations of claim 6 depending from claim 1, including an augur-anchored beach umbrella with a detachable auger, but does not teach a tilting umbrella. Campomar teaches an auger-anchored umbrella with a joint means (C) disposed

between the upper (A) and lower (B) tubular elements for tilting the upper tubular element of the canopy about an axis with respect to the lower tubular element. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste and Adams et al. by using a tilting umbrella as taught by Campomar in order to change the position of the umbrella without changing the anchor position.

b. Jacinto et al. in view of Doreste, Adams et al. and Mattson as applied to claim 6 as dependent on claim 5 above, and further in view of Campomar. As stated above, Jacinto et al. in view of Doreste, Adams et al. and Mattson teaches all of the limitations of claim 6 as dependent on claim 5, including an auger-anchored beach umbrella with a detachable auger, but does not teach a tilting umbrella. Campomar teaches an auger-anchored umbrella with a joint means (C) disposed between the upper (A) and lower (B) tubular elements for tilting the upper tubular element of the canopy about an axis with respect to the lower tubular element. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste, Adams et al. and Mattson by using a tilting umbrella as taught by Campomar in order to change the position of the umbrella without changing the anchor position.

**Conclusion**

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tizzoni, Boissonault, Gibson, Brooks III, Mercer and Saraf disclose beach umbrella anchoring devices. Burtelson et al., Turzillo, Lamb et al., Sullivan, and Kandle disclose devices for inserting anchors into the earth. Pylant discloses an anchor which can be drilled into the ground using a hand-held drill.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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LANNA MAI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

